

Order

Michigan Supreme Court
Lansing, Michigan

Entered: February 3, 2004

ADM File No. 2003-25

Amendment of
Rules 3.977 and 7.204
of the Michigan Court Rules

Maura D. Corrigan,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman,
Justices

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendments are adopted, effective May 1, 2004.

[The present language is amended as indicated below by underlining for new text and strikeover for text that is deleted.]

Rule 3.977 Termination of Parental Rights

(A) – (H) [Unchanged.]

(I) Respondent's Rights Following Termination.

(1) Advice. Immediately after entry of an order terminating parental rights, the court shall advise the respondent parent orally or in writing that:

- (a) The Respondent is entitled to appellate review of the order.
- (b) If the respondent is financially unable to provide an attorney to perfect an appeal, the court will appoint an attorney and furnish the attorney with the portions of the transcript and record the attorney requires to appeal.
- (c) A request for the assistance of an attorney must be made within 14 24 days after notice of the order is given or an order is entered denying a timely filed postjudgment motion. The court must then give a form to the respondent with the instructions (to be repeated on the form) that if the respondent desires the appointment of an attorney, the form must be returned to the court within the required period (to be stated on the form).

- (d) The Respondent has the right to file a denial of release of identifying information, a revocation of a denial of release, and to keep current the respondent's name and address as provided in MCL 710.27.

(2) Appointment of Attorney.

- (a) If a request is timely filed and the court finds that the respondent is financially unable to provide an attorney, the court shall enter an order appointing an attorney within 14 days after the respondent's request is filed. In the interest of justice, the court may appoint an attorney where the request is filed untimely. The chief judge of the court shall bear primary responsibility for ensuring that the appointment is made within the deadline stated in this rule.

- (b) In a case involving the termination of parental rights, the order described in (I)(2) and (3) must be entered on a form approved by the State Court Administrator's Office, entitled "Claim of Appeal and Order Appointing Counsel," and the court must immediately send to the Court of Appeals a copy of the Claim of Appeal and Order Appointing Counsel, a copy of the judgment or order being appealed, and a copy of the complete register of actions in the case. The court must also file in the Court of Appeals proof of having made service of the Claim of Appeal and Order Appointing Counsel on the respondent(s), appointed counsel for the respondent(s), the court reporter(s)/recorder(s), petitioner, the prosecuting attorney, the lawyer-guardian ad litem for the child(ren) under MCL 712A.13a(1)(f), and the guardian ad litem or attorney (if any) for the child(ren). Entry of the order by the trial court pursuant to this subrule constitutes a timely filed claim of appeal for the purposes of MCR 7.204.

- (3) Transcripts. If the court finds that the respondent is financially unable to pay for the preparation of transcripts for appeal, the court must ~~may, on motion or its own initiative,~~ order transcripts prepared at public expense.

(J) [Unchanged.]

Rule 7.204 Filing Appeal of Right; Appearance

(A) Time Requirements. The time limit for an appeal of right is jurisdictional. See MCR 7.203(A). The provisions of MCR 1.108 regarding computation of time apply.

- (1) An appeal of right in a civil action must be taken within
 - (a) 21 days after entry of the judgment or order appealed from;
 - (b) 21 days after the entry of an order denying a motion for new trial, a motion for rehearing or reconsideration, or a motion for other postjudgment relief, if the motion was filed within the initial 21-day appeal period or within further time the trial court may have allowed during that 21-day period; or
 - (c) another time provided by law.

If a party in a civil action is entitled to the appointment of an attorney and requests the appointment within 14 ~~21~~ days after the final judgment or order, the 21-day period for the taking of an appeal or the filing of a postjudgment motion begins to run from the entry of an order appointing or denying the appointment of an attorney. If a timely postjudgment motion is filed before a request for appellate counsel, the party may request counsel within 14 ~~21~~ days after the decision on the motion.

(2) [Unchanged.]

(B) – (H) [Unchanged.]

Staff Comment: The February 3, 2004, amendments to MCR 3.977(I), effective May 1, 2004, accomplish the following: (1) shorten the deadline for requesting the appointment of counsel following entry of orders terminating parental rights; (2) impose a new deadline for entry of the order appointing counsel in such cases; (3) impose primary responsibility on the chief judge of the court to ensure that the appointment is timely made; and (4) require the appointment of counsel and the transcript order to be contained on a form that functions as the claim of appeal.

Subrule (I)(2)(b) is a new rule that provides that the order appointing appellate counsel also serves as a claim of appeal in cases where the respondent makes a timely request for appellate counsel. The subrule further directs the State Court Administrative Office to approve a form for use by the trial courts that will act as a combination order of appointment, transcript order, and claim of appeal.

The amendment to MCR 7.204(A)(1) shortens the time for requesting the appointment of appellate counsel in appeals from orders terminating parental rights. This new deadline conforms to the amendments to MCR 3.977(I).

The staff comment is not an authoritative construction by the Court.



I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

February 3, 2004 Corbin R. Davis

Clerk